ARGUMENT DOCKET

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 14-0207

STATE OF WEST VIRGINIA, ex rel. J. C., a minor, by and through his mother and next friend, MICHELLE COOK, et al,

Petitioners,

v.

THE HONORABLE JAMES P. MAZZONE, Lead Presiding Judge, Zoloft Litigation, Mass Litigation Panel; PFIZER, INC., ROERIG, a division of Pfizer, Inc., and GREENSTONE, LLC f/k/a Greenstone, LTD.

Respondents

PETITIONERS' SUPPLEMENTAL BRIEF IN SUPPORT OF EMERGENCY PETITION FOR PROHIBITION

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I. STATEMENT OF THE CASE

This supplemental brief is submitted in support of an Emergency Petition for Writ of Prohibition from a ruling by the Mass Litigation Hearing Panel ["Panel"] that it will treat one civil action with twenty-five plaintiff families as twenty-five separate cases based on its erroneous interpretation of Rule 3(a) and Rule 20 of the Rules of Civil Procedure ["Rule 3(a)" and "Rule 20"].

In Petitioners' view, as originally articulated in their Emergency Petition, the Panel's ruling directly contradicts prior rulings in this case from the Wayne County Circuit Court and United States District Court for the Southern District of West Virginia,[1] which have held that Rule 3(a) is an administrative rule that does nothing more than ensure fees are paid by each unrelated plaintiff in a multi-plaintiff cases.

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[1] *J.C. v. Pfizer, Inc.*, Civil Action No. 3:12-cv-04103 at *7 (S.D. W. Va. September 15, 2012)("administrative separation of claims in state court [under Rule 3(a)] does not determine the propriety of joinder in federal court. Defendants have not met their burden of demonstrating that Plaintiffs' claims were not properly joined because of case processing practices in Wayne County Circuit Court."), App. 9; *J.C. v. Pfizer, Inc.*, Civil Action No. 3:12-cv-04103 at *7 and 10 (S.D. W. Va. February 5, 2014)("In both instances, the statute is clear: an entire civil action—not a subpart thereof—is removable. . . . This Court cannot and will not convert the clear consolidation of multiple cases into one civil action by a state court into something that it is not."), App. 128 and 131; see also *Almond v. Pfizer, Inc.*, 2013 WL 6729438 at *4 (S.D. W. Va.)("The Plaintiffs in the present action properly joined their claims in a single case, regardless of the administrative filing requirements of the state court. This Court finds Judge Chambers' reasoning persuasive with respect to the application of West Virginia Rule of Civil Procedure 3(a), and further finds that the rule does not mandate that federal courts treat all plaintiffs in a joined case, whether under a single civil action number or not, independently for the purposes of remand analysis."); *Grennell v. Western Southern Life Ins. Co.*, 298 F. Supp. 2d 390, 395 (S.D. W. Va. 2004)("Furthermore, this Court's treatment of the lawsuits (including assigning multiple case numbers and requiring Defendants to pay multiple filing fees) has no bearing on the nature of the case as it existed in Circuit Court. The Court therefore finds that Defendants have not met their burden of demonstrating that the Mason County Circuit Court litigation involved non-joined plaintiffs.")(emphasis in original). The Fourth Circuit dismissed an appeal from Judge Chambers' 2012 remand order in *E.D. ex rel. Darcy v. Pfizer, Inc.*, 722 F.3d 574 (4th Cir. 2013), and this Court refused a petition for writ of prohibition from Judge Young's 2012 ruling in *State ex rel. Pfizer, Inc. v. Young*, No. 12-1370 (W. Va. Jan. 9, 2013), App. 70.

Moreover, the Panel's ruling is inconsistent with the plain language of the Rules of Civil Procedure; with this Court's directive that they be liberally construed; with the focus of the Rules on "complaints" rather than "plaintiffs" with respect to case processing; with the impetus behind amendment to Rule 3(a); and with the absence of any indication that this Court intended Rule 3(a) to substantively change the procedure for joinder or severance, which are explicitly governed by Rules 20 and 21.

If the Panel's interpretation of Rule 3(a) is permitted to become the law of the State, almost every multi-plaintiff complaint filed against non-resident defendants that would normally be litigated before the Panel will be removed to federal court.

It is for this reason that this case is critical, not just to these Petitioners, but to all litigants in cases in which their claims against non-resident defendants may be joined under Rule 20. The reason Respondents have so persistently litigated this issue with multiple motions in the Circuit Court of Wayne County; in the United States District Court for the Southern District of West Virginia; in the United States Court of Appeals for the Fourth Circuit; in this Court; and in the Mass Litigation Panel is less about Rule 3(a) and more about having cases removed to federal court where they are subject to transfer to remote MDLs, sweeping away not only the claims of non-residents, but the claims of West Virginia plaintiffs.

Following the approach advocated by Petitioners will not adversely impact the Mass Litigation Panel. Cases with only one complaint with multiple plaintiffs cans still be transferred to the Panel under Tr. Ct. R. 26.06. Indeed, Judge Chambers referenced this in his most recent remand order. App. 129-130.

Respondents' persistence in attempting to restrict the ability of the Panel to preside over these types of cases has resulted in the issue being thoroughly briefed and argued to a number of state and federal tribunals. Every tribunal, state and federal, other than the Panel, has rejected Respondents' expansive reading of Rule 3(a). Because Petitioners respectfully submit that it was never this Court's intention in amending Rule 3(a) to supersede the right of unrelated plaintiffs to join their related claims against one or more defendants in a single complaint, they request an award of the relief requested.

II. SUMMARY OF ARGUMENT

Rule 3(a) is a general rule governing the administration of complaints filed by multiple unrelated plaintiffs with respect to numbering, docketing, and collecting fees. Rule 20 is a specific rule governing when multiple unrelated plaintiffs may join their claims against a defendant or related defendants in a single complaint. For the two rules to be properly harmonized, the Rules of Civil Procedure must be read as a whole and preference given to Rule 20 with respect to when a single complaint can be filed by multiple unrelated plaintiffs. Accordingly, Petitioners respectfully request that this Court reject the Panel's interpretation of Rule 3(a) and Rule 20, which is not controlling and would unnecessarily impinge upon the jurisdiction of West Virginia courts, and award to Petitioners the relief requested.

III. ARGUMENT

A. THE RULES OF CIVIL PROCEDURE ARE TO BE LIBERALLY CONSTRUED

With respect to our Rules of Civil Procedure, R. Civ. P. 1 provides, "They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." Moreover, it has been observed, "The Supreme Court has been adamant in

holding that the rules should be construed liberally to promote justice. Rule 1 echoes the policy of liberal construction in holding that the rules of civil procedure are to be construed to secure a just, speedy, and inexpensive determination of every action." F. Cleckley, R. Davis & L. Palmer, LITIGATION HANDBOOK ON WEST VIRGINIA RULES OF CIVIL PROCEDURE § 1[2][c] (4th ed. 2012)(footnotes omitted).

Indeed, specifically with respect to R. Civ. P. 20 ["Rule 20"], which permits joining multiple, unrelated parties in a single complaint, it has been noted, "Justice McHugh noted in *Anderson v. McDonald* that Rule 20 is to be liberally construed. A liberal construction of the rule is consistent with the rule's purpose in providing for an efficient and complete resolution of legal disputes. The parties, courts and the public have a vested interest in having litigation costs and time minimized. Rule 20 is a vehicle for assisting in minimizing litigation costs and time." LITIGATION HANDBOOK at § 20[2] (emphasis supplied).

Petitioners submit that a liberal construction of Rule 3(a) and Rule 20 is consistent with treating their complaint as a single complaint for purposes of the processing of that complaint by the Panel. Consequently, Petitioners respectfully request that this Court interpret these rules in a manner which will preserve unto all plaintiffs their full rights of joinder under Rule 20.

B. THE RULES OF CIVIL PROCEDURE PROVIDE FOR THE PROCESSING OF "COMPLAINTS," NOT "PLAINTIFFS"

R. Civ. P. 2 provides, "There shall be one form of action known as 'civil action,'" and R. Civ. P. 3(a) provides, "A civil action is commenced by filing a complaint with the court." R. Civ. P. 3(a) further provides, "For a complaint naming more than one individual plaintiff not related by marriage, a derivative or fiduciary relationship, each

plaintiff shall be assigned a separate civil action number and be docketed as a separate civil action and be charged a separate filing fee by the clerk of a circuit court." (emphasis supplied).

Under the Rules of Civil Procedure, the fact that "each plaintiff" in a multi-plaintiff complaint not related by marriage, a derivative or fiduciary relationship is "assigned a separate civil action number" and is "docketed as a separate civil action" and is "charged a separate filing fee," does not convert the single "complaint" into multiple "complaints" for purposes of processing.

For example, immediately after R. Civ. P. 3(a), R. Civ. P. 3(b) provides, "Every complaint shall be accompanied by a completed civil case information statement . . . ." (emphasis supplied). It does not state that multiple civil case information statements are filed for "each plaintiff" whose civil action is assigned a separate number must file a civil case information statement. Rather, only one civil case information statement is filed for every "complaint" even where multiple unrelated plaintiffs are involved. Again, "[u]nder Rule 3(a) all civil actions are commenced by filing a complaint with the court." LITIGATION HANDBOOK at § 3(a)[2] (footnote omitted).

When a "complaint" is filed by multiple, unrelated plaintiffs that "complaint" constitutes a single case for purposes of processing even if under the rules separate case numbers and filing fees are assigned and assessed. It is for this reason that this Court "held that when a circuit court clerks receives a complaint, which lists multiple plaintiffs, that complies with the rules of civil procedure, and is accompanied by the filing fee mandated by W. Va. Code § 59-1-11(a), the clerk must file the complaint." LITIGATION HANDBOOK at § 3(a)[2] (footnote omitted).

Throughout the rules, it is clear that it is the "complaint" that is being processed, not "each plaintiff."

R. Civ. P. 4(b) provides, for example, that "Upon the filing of the complaint, the clerk shall forthwith issue a summons to be served as directed by the plaintiff." (emphasis supplied). R. Civ. P. 4(c)(1) provides, "A summons shall be served with a copy of the complaint." (emphasis supplied). Accordingly, in the instant case, summonses were issued not for "every plaintiff," but for each defendant and served with the single "complaint," not a complaint for each plaintiff.

R. Civ. P. 5(a) provides, "Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants . . . shall be served upon each of the parties." (emphasis supplied). Obviously, as in this case, multiple plaintiffs are not required to each serve separate pleadings, motions, and other papers governed by R. Civ. P. 5; rather, those pleadings, motions, and other papers are served arising from the single complaint.

R. Civ. P. 15(a) provides, "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served," and because a "complaint" constitutes a pleading, it may be amended at any time, as a matter of course. LITIGATION HANDBOOK at § 15(a)[2].

Once a pleading, including a complaint, is amended, whether as a matter of right, or with court approval, the "amended pleading ordinarily supersedes the prior pleading"

because the "prior pleading is in effect withdrawn as to all matters not restated in the amended pleading and becomes *funtus officio.*" LITIGATION HANDBOOK at § 15(a)[2] (footnote omitted). "Consequently, an amendment to a complaint does not constitute a new filing of the case." LITIGATION HANDBOOK at § 3(a)[2] n.42 (citation omitted).

Likewise, as in this case, when a single complaint is filed with multiple, unrelated plaintiffs and it is later consolidated with a separate suit with additional plaintiffs, it "does not constitute a new filing of the case" and contrary to Respondents' rationale, would not constitute separate complaints for purposes of their processing by the Panel.

Consequently, Petitioners respectfully request that this Court interpret the Rules of Civil Procedure in a manner to provide that even where multiple, unrelated plaintiffs are joined in a single complaint under Rule 20, but are subject to the numbering, docketing, and fee provisions of Rule 3(a), that the single complaint be processed as a single complaint for purposes of all of the other applicable Rules of Civil Procedure, including those governing the processing of cases by the Mass Litigation Panel.

C. RULE 3(A) IN BOTH ITS HERITAGE AND PLAIN LANGUAGE INDICATES THAT A COMPLAINT FILED BY MULTIPLE, UNRELATED PLAINTIFFS IS TO BE PROCESSED AS A SINGLE COMPLAINT, NOT AS MULTIPLE COMPLAINTS

In their Petition, Petitioners explained the genesis of Rule 3(a) – this Court's opinion in *Cable v. Hatfield*, 202 W. Va. 638, 644-45, 505 S.E.2d 701, 707-08 (1998).

In *Cable*, this Court recognized that although more and more multi-plaintiff cases were being filed in West Virginia, there was no mechanism in the Rules of Civil Procedure to ensure that each plaintiff paid a filing fee to alleviate any financial burden caused by mass litigation. Id. Thus, this Court gave judges the power to administratively order each plaintiff to pay "separate filing fees" and even "additional filing fees in

multiple plaintiff cases until such time as a statewide rule governing filing fees in multiple plaintiff cases is promulgated." Id. (emphasis added).

In 2008, a statewide rule was promulgated in the form of Rule 3(a) that codified the administrative concepts set forth in *Cable*. And like all procedural rules, the language of the rule is important. It makes clear that each plaintiff shall be "docketed as" a separate civil action and "be charged a separate fee by the clerk of the circuit court." Rule 3(a) (emphasis supplied).

Thus, the rule accomplishes two things: (1) it ensures that each plaintiff pays a separate filing fee and (2) it creates a sensible numbering and docketing system to track those fees and other aspects of the case. It was never intended to have any impact on the other rules, including Rule 20.[2]

The Court's decision in *Cable* makes clear that issues of numbering, docketing, and fees are "administrative" in nature and not "procedural."

In Syllabus Point 3 the Court stated:

> A circuit judge or chief judge of a circuit with more than one judge, shall have the authority to enter an administrative order governing when separate filing fees are required and may require additional filing fees in multiple plaintiff cases until such time as a statewide rule governing filing fees in multiple plaintiff cases is promulgated.

(emphasis supplied).

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[2] Indeed, with respect to Rule 3(a), it has been noted, "[F]or purpose of mass litigation cases a complaint naming more than one individual plaintiff not related by marriage, a derivative or fiduciary relationship, must be assigned (1) a separate civil action number for each plaintiff, (2) be docketed as a separate civil action and (3) be charged a separate fee by the clerk of the circuit court." Litigation Handbook at § 3(a)[2] (emphasis supplied). In other words, Rule 3(a)'s administrative requirements for numbering, docketing, and charging fees does not impact the treatment of a single complaint with multiple unrelated plaintiffs as one complaint by the Mass Litigation Panel.

In Syllabus Point 4 the Court held:

> When a circuit court clerk receives a complaint, which lists multiple plaintiffs, complies with the West Virginia Rules of Civil Procedure and is accompanied by the seventy-five dollar filing fee mandated by W. Va. Code § 59-1-11(a) (1996) (Repl. Vol. 1997), the clerk must file the complaint. Once such a complaint has been filed, the circuit judge to whom the case has been assigned must determine whether the requirements, if any, that have been administratively established by the chief judge of that circuit under Syllabus point 3 of this opinion, are met such that additional filing fees should be assessed.

(emphasis supplied).

This Court never intended its amendment to Rule 3(a) regarding the administrative aspects of numbering, docketing, and collecting of fees that a single complaint with multiple, unrelated plaintiffs be treated as multiple complaints for purposes of processing by the Mass Litigation Panel and, consequently, Petitioners submit that this Court should overturn a contrary decision by the Panel and thereby ensure that these cases and future cases remain in the West Virginia state courts.

D. THIS COURT NEVER INTENDED THAT RULE 3(A) SUPERSEDES RULE 20 WHICH PERMITS THE JOINDER OF MULTIPLE, UNRELATED PLAINTIFFS IN A SINGLE COMPLAINT

Conspicuously absent from Rule 3(a) is any language that severs the claims of the multiple plaintiffs, mentions Rule 20 at all, or purports to substantively (rather than administratively) create separate cases in any way. If the rule was meant to do any of those things – all of which effectively erase Rule 20 from the procedural rules – either Rule 3(a) or Rule 20 or both would say so.

In other words, if Rule 3(a) was intended to actually transform Petitioners' claims into separate cases for all purposes, rather than simply ensure that they are "docketed" in

a manner that makes it efficient to administratively track them, the Rule would so provide. It does not.

There is no way to square Rule 3(a) with Rule 20 if 3(a) is read as a substantive rule requiring severance of claims that otherwise meet the criteria of Rule 20. Instead, Rule 20, which explicitly permits unrelated plaintiffs to join in a single complaint at the time of filing if they meet the rule's requirements (as the Petitioners do in this case), would have no effect because Rule 3(a) would mandate an automatic severance by the simple fact that the complaint contains multiple plaintiffs.[3]

It has been observed that, "Rule 20(a) states that all persons may join in one action as plaintiffs if they assert any right to relief . . . in respect of or arising out of the same . . . . series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action." LITIGATION HANDBOOK at § 20(a)[1].

"To satisfy the first prong of the test," it has been noted, "a right to relief must be asserted by . . . each plaintiff . . . relating to or arising out of the same transaction or occurrence. Courts have construed the transaction or occurrence prong to mean all logically related events entitling a person to institute a legal action against another. Absolute identity of all events is unnecessary. Moreover a single transaction or occurrence may be found where there would be an overlapping of proof and the duplication of testimony." LITIGATION HANDBOOK at § 20(a)[2][a][i] (footnote omitted).

"Under the second prong of the test," it has been stated, "there must be a question of law or fact common to all plaintiffs . . . arising in the action. The common question

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[3] As the court held in *Grennell,* supra at 395, plaintiffs have the right under Rule 20 (both the federal rule and the West Virginia rule) to join together in the same suit at the time suit is filed.

prong does not require that all questions of law and fact raised by the dispute be common; joinder of parties is proper if there is any question of law or fact common to all." LITIGATION HANDBOOK at § 20(a)[2][a][ii] (footnote omitted).

It is undisputed in this case that Petitioners meet both of these tests and that the properly joined their claims against the Respondents in a single complaint,[4] but satisfying the requirements of Rule 20 will be rendered meaningless under the Panel's interpretation of Rule 3(a) if Petitioners' complaint can be torn into twenty-five separate pieces by the Panel for purposes of processing. Consequently, Petitioners respectfully request that this Court award to them the relief requested.

E. THE PANEL'S INTERPRETATION OF RULE 3(A) AND RULE 20 IS SUBJECT TO *DE NOVO* REVIEW AND THE RULES OF CONSTRUCTION APPLICABLE TO THIS COURT'S RULES WARRANT REVERSAL OF THE PANEL'S INTERPRETATION

The Panel's interpretation of Rule 3(a) and Rule 20 is subject to *de novo* review by this Court. *Allen v. Monsanto Co.*, 2013 WL 6153150 at *5 (W. Va.)("[A] circuit court's interpretation of the West Virginia Rules of Civil Procedure presents a question of law and is reviewed *de novo.* Syl. pt. 4, *Keesecker v. Bird,* 200 W. Va. 667, 490 S.E.2d 754 (1997)").

Moreover, "'Court rules are interpreted using the same principles and canons of construction that govern the interpretation of statutes.' Syllabus Point 2, *Casaccio v. Curtiss*, 228 W. Va. 156, 718 S.E.2d 506 (2011)." Syl. pt., 1, *Postlewait v. City of Wheeling*, 231 W. Va. 1, 743 S.E.2d 309 (2012).

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[4] Moreover, it has been recognized that, "[I]f a defendant has served a responsive pleading, a plaintiff seeking joinder under Rule 20(a) must move the trial court to amend the pleading under Rule 15 to add an additional person," LITIGATION HANDBOOK at § 20(a)[2][b], and when that occurs, the original complaint is rendered a nullity, replaced by the amended complaint.

Those rules of construction favor Petitioners regarding Rule 3(a) and Rule 20.

First, "When a civil procedure rule is plain and unambiguous, it should not be construed, but applied according to its terms." LITIGATION HANDBOOK at § 1[2][c] (footnote omitted). Here, Rule 3(a) says nothing about treating one complaint as multiple complaints for any purposes other than docketing, numbering, and collecting fees, and certainly nothing about negating the right of multiple, unrelated plaintiffs to join their claims against one or more defendants in a single complaint under Rule 20.

Second, "The Supreme Court has indicated that the rules do not restrict either the original or general jurisdiction of circuit courts in the state, but merely establish procedures for the orderly process of civil cases as anticipated by the due process protections of the state constitution." LITIGATION HANDBOOK at § 1[2][b] (footnote omitted). The Panel's interpretation of the rules, however, would effectively negate its jurisdiction where the practical result of breaking a single complaint into twenty-five pieces will result in removal of Petitioners' claims to federal court and then transfer to the Eastern District of Pennsylvania.

Third, the Panel's views regarding what it now believes its purposes were in proposing the amendments to Rule 3(a) are not controlling.[5] Rule 3(a) is the Court's rule

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[5] See *Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740, 752 (2012)("[T]he views of a single legislator, even a bill's sponsor, are not controlling.")(citation omitted); *Graham County Soil and Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 298 (2010)("Needless to say, this letter [written by one of a statute's primary sponsors] does not qualify as legislative 'history,' given that it was written 13 years after the amendments were enacted. It is consequently of scant or no value for our purposes."); *Weinberger v. Rossi*, 456 U.S. 25, 34 n.15 (1982)("The contemporaneous remarks of a sponsor of legislation are certainly not controlling in analyzing legislative history.")(citation omitted); *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 117 (1980)("In evaluating the weight to be attached to these statements, we begin with the oft-repeated warning that 'the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.' . . . And ordinarily even the contemporaneous remarks of a single legislator who sponsors a bill are not

and whatever ownership the Panel may feel over it amendment, it is the Court's view of its own rule and not the Panel's view that is controlling.

Fourth, "When interpreting statutes promulgated by the Legislature, we first discern the objective of the enactment," this Court has observed, "In gleaning legislative intent, we endeavor to construe the scrutinized provision consistently with the purpose of the general body of law of which it forms a part." *State ex rel. McGraw v. Combs Services*, 206 W. Va. 512, 518, 526 S.E.2d 34, 40 (1999)(citations omitted). Here, the purpose of amending Rule 3(a) was to collect filing fees from each unrelated plaintiff who file a single complaint under Rule 20 and to number and docket separately each unrelated plaintiff's claims – nothing more and nothing less. The purpose was never to supersede Rule 20.

Finally, "Statutes which relate to the same subject matter should be read and applied together so that the Legislature's intention can be gathered from the whole of the enactments." Syl. pt. 3, *Smith v. State Workmen's Compensation Commissioner*, 159 W. Va. 108, 219 S.E.2d 361 (1975). "A statute is enacted as a whole with a general purpose and intent," this Court has observed, "and each part should be considered in connection with every other part to produce a harmonious whole. Words and clauses should be given a meaning which harmonizes with the subject matter and the general purpose of the statute. The general intention is the key to the whole and the interpretation of the whole controls the interpretation of its parts." Syl. pt. 1, *State ex rel. Holbert v. Robinson*, 134 W. Va. 524, 59 S.E.2d 884 (1950). "The general rule of statutory construction," this

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controlling in analyzing legislative history. . . . We do not think that either Representative Moss' isolated remark or the post hoc statement of the Conference Committee with respect to § 6(b) is entitled to much weight here.")(citations omitted).

Court has further noted, "requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled." Syl. pt. 1, *UMWA by Trumka v. Kingdon*, 174 W. Va. 330, 325 S.E.2d 120 (1984). Here, reading Rule 3(a) and Rule 20 *in pari materia* supports Petitioners' argument that this Court never intended, in its enactment of Rule 3(a) to prevent unrelated plaintiffs from joining their claims against a defendant or defendants in a single action to be processed as a single action under Rule 20.

Rule 3(a) is a general rule governing the administration of complaints filed by multiple unrelated plaintiffs with respect to numbering, docketing, and collecting fees. Rule 20 is a specific rule governing when multiple unrelated plaintiffs may join their claims against a defendant or related defendants in a single complaint. For the two rules to be properly harmonized, the Rules of Civil Procedure must be read as a whole and preference given to Rule 20 with respect to when a single complaint can be filed by multiple unrelated plaintiffs.[6] Accordingly, Petitioners respectfully request that this

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[6] Respondents advance what is not really a rule construction and application argument, but an attack on Petitioners' complaint under Rule 20:

> Both Rule 3(a) and Rule 20 can be interpreted according to their terms. Rule 3(a) requires that unrelated plaintiffs bring separate cases, and while the cases must begin separately, the court can then consolidate the cases if the Rule 20 requirements for joinder are satisfied. That approach confirms with the language and intent of both rules, and it ensures that plaintiffs can be joined in one case, but only if appropriate under the Rule 20 standard. Because the circuit court failed to follow this approach, its consolidation orders conflicted with Rule 3(a), and the Panel corrected vacated the orders.

Pfizer, Inc. and Greenstone LLC's Supplemental Brief at 5 (emphasis supplied). In other words, Respondents do not dispute, because they cannot dispute, that Petitioners joined their claims in a single complaint, nor do they argue that Rule 3(a) dictates that every complaint by multiple unrelated plaintiffs are multiple complaints for purposes of the Rules of Civil Procedure. Rather, they argue that in this case the joinder of multiple unrelated parties in a single complaint was improper under Rule 20, but Respondents' remedy for misjoinder is not found in Rule 3(a), but in R. Civ. P. 21. See LITIGATION HANDBOOK at § 21[2][a] ("Rule 21 does not define misjoinder,

Court reject the Panel's interpretation of Rule 3(a) and Rule 20, which is not controlling and would unnecessarily impinge upon the jurisdiction of West Virginia courts, and award to them the relief requested.

F. PROCESSING A SINGLE COMPLAINT FILED BY MULTIPLE, UNRELATED PLAINTIFFS AS A SINGLE COMPLAINT EXCEPT FOR NUMBERING, DOCKETING, AND COLLECTING FEES, INCLUDING *PRO HAC VICE* FEES, IS CONSISTENT WITH THE RULES OF CIVIL PROCEDURE AND SOUND JUDICIAL ADMINISTRATION

Petitioners understand and agree that the Mass Litigation Panel has the right to administratively manage its docket.

As set forth above, Rule 3(a) is an express means by which the Panel is empowered to dictate the administrative treatment of plaintiffs in mass litigation and make sure that such litigation is not a financial burden.

As such, Petitioners' efforts to ensure that Rule 3(a) is not extended beyond its administrative purpose into a substantive realm that directly contradicts other long-standing procedural rules such as Rule 20 should not be taken as a challenge to the Panel's ruling that a *pro hac vice* fee must be paid for each Plaintiff family. To the

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but cases make clear that misjoinder of parties occurs when they fail to satisfy either of the preconditions for permissive joinder under Rule 20(a).")(footnote omitted). It is only after a motion for misjoinder is granted and plaintiffs who joined in a single action are separated that it is appropriate to treat the severed plaintiffs as independent actions for further processing. See, e.g., *Opinion of the Clerk*, 982 So.2d 1059, 1061 (Ala. 2007)("Since a severed claim becomes a separate and independent case for purposes of finality of judgment and appellate review, there is no logical reason to view the claim as part of the original case for filing fee purposes."); *In re Accutane Products Liability Litigation MDL # 1626*, 2012 WL 4513339 at *1 (M.D. Fla.)("Each plaintiff shall electronically file in his or her individual civil action number an amended complaint setting forth the specific factual basis of their claims within fourteen (14) days from the date of the assignment of their individual civil action number. At that time, the severed plaintiff shall also pay a filing fee to the Clerk of Court."); *In re Asbestos Product Liability Litigation*, 2009 WL 959539 at *1 (E.D. Pa.)("Within sixty (60) days, each individual plaintiff shall file one 'Severed and Amended Complaint' in this court. The Clerk of this Court is directed to assign separate civil action numbers to each individual plaintiff.").

contrary, Petitioners respect this order by the Panel and stand ready and willing to pay *pro hac vice* fees in accordance with it.[7]

IV. CONCLUSION

WHEREFORE, Petitioners respectfully request that this Court issue a writ of prohibition overruling the ruling of the Mass Litigation Panel treating their single complaint filed under R. Civ. P. 20 as multiple complaints for purposes of processing.

Respectfully submitted,

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[7] Ironically, even though Respondents argue that Petitioners' single complaint should be treated as multiple complaints, their attorneys paid but a single *pro hac vice fee* in conjunction with this proceeding. **Exhibit A.**

VERIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF CABELL, TO-WIT:

I, Ancil G. Ramey, being first duly sworn, state that I have read the foregoing PETITIONERS' SUPPLEMENTAL BRIEF IN SUPPORT OF EMERGENCY PETITION FOR PROHIBITION; that the factual representations contained therein are true, except so far as they are stated to be on information and belief; and that insofar as they are stated to be on information and belief, I believe them to be true.

Ancil G. Ramey

Taken, subscribed and sworn to before me this 18th day of April, 2014.

My commission expires: April 23, 2022

Barbara L. Miller
Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
BARBARA L MILLER
STEPTOE & JOHNSON PLLC
PO BOX 2195
HUNTINGTON, WV 25722-2195
My commission expires April 23, 2022

EXHIBIT A

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 14-0207

STATE OF WEST VIRGINIA, *ex rel.* J.C., a minor, by and through his mother and next friend, MICHELLE COOK, et al, Petitioners, v. THE HONORABLE JAMES P. MAZZONE, Lead Presiding Judge, Zoloft Litigation, Mass Litigation Panel, and PFIZER, INC., ROERIG, a division of Pfizer, Inc., and GREENSTONE, LLC f/k/a Greenstone, LTD. Respondent.	Underlying: IN RE: ZOLOFT LITIGATION Civil Action No. 14-C-7000

VERIFIED STATEMENT OF APPLICATION FOR ADMISSION
PRO HAC VICE OF MARK S. CHEFFO, ESQUIRE

Pursuant to Rule 8.0 of the *West Virginia Rules for Admission to the Practice of Law,* Applicant Mark S. Cheffo, Esquire, being duly sworn, hereby deposes and says as follows:

1. Action which is the subject of the Application:

State of West Virginia, *ex rel.,* J.C., a minor, by and through his mother and next friend, Michelle Cook, et al v. the Honorable James P. Mazzone, Lead Presiding Judge, Zoloft Litigation, Mass Litigation Panel, And Pfizer, Inc., Roerig, A Division Of Pfizer, Inc., And Greenstone, LLC F/K/A Greenstone, LTD., WVSCA Docket No. 14-0207.

2. I am a member in good standing of the Supreme Court of the State of New York, Appellate Division, Second Judicial Department and the name, address and telephone number of the disciplinary agency for this Court is:

Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts
Renaissance Plaza
335 Adams Street, Suite 2400
Brooklyn, NY 11201-3745
(718) 923-6300

3. In addition, I am a member in good standing of the Courts listed in Attachment A.

4. In the above-styled matter, I will be associated with Michael J. Farrell, Esquire and Erik W. Legg, Esquire, of Farrell, White & Legg PLLC, members of the bar of this Court, who maintain an office for the transaction of business at 914 Fifth Avenue, Huntington, West Virginia 25772, which office is located in Cabell County, West Virginia; and upon whom all pleadings, notices and papers may be served in accordance with Rule 8.0, West Virginia Rules for Admission to the Practice of Law. Filed contemporaneously herewith is the Written Statement of Michael J. Farrell, Esquire and Erik W. Legg, Esquire, evidencing their endorsement that they shall be the local attorneys.

5. I am not currently, and within the past twenty-four (24) months have not been, disbarred, suspended or otherwise disciplined by any Bar or court to which I have been admitted to practice law.

6. I have been involved in the following matters pending before a West Virginia tribunal or other similar body in the twenty-four (24) months preceding this *Verified Statement of Application: Wilson v. Pfizer, et al.,* No. 07-C-0892, pending in the Circuit Court of Cabell County, West Virginia*; J.C., a minor by and through his Mother and Next Friend, Michelle Cook, et al v. PFIZER, INC.; ROERIG, a division of Pfizer Inc., and GREENSTONE, LLC f/k/a Greenstone, LTD.,* Consolidated Civil Action No. 12-C-146, pending in the Circuit Court of Wayne County; *Pauley v. Pfizer Inc.,* No. 2:13-cv-17178, pending in the Southern District of West Virginia; *Clack v. Pfizer Inc.*, No. 1:13-cv-27992, pending in the Southern District of West Virginia Bluefield Division; *Kearnes v. Pfizer Inc.,* No. 3:13-cv-00154, pending in the Northern District of West Virginia; and *Almond, et al. v. Pfizer Inc.*, No. 13-C-159, pending in the Circuit Court of McDowell County, West Virginia.

7. Attachment B lists the matters that my law firm, Quinn Emanuel Urquhart & Sullivan, LLP, has been involved in pending before West Virginia courts, tribunals or other similar bodies in the twenty-four (24) months preceding this *Verified Statement of Application.*

8. I have and will continue to familiarize myself with, and agree to comply with, all laws, rules and regulations of West Virginia State and local governments, where applicable, including taxing authorities and any standards for *pro bono* civil and criminal indigent defense legal services.

9. An application fee of Three Hundred Fifty Dollars ($350.00) has been paid to the West Virginia State Bar and a copy of this *Verified Statement of Application* will be delivered to the West Virginia State Bar concurrently with its submission to the Court.

WHEREFORE, Applicant Mark S. Cheffo, Esquire, respectfully requests that this Honorable Court grant her the privilege of admission to practice law, *pro hac vice,* as counsel for Pfizer Inc., including its former division Roerig, and Greenstone LLC in the matter of State of West Virginia, *ex rel.,* J.C., a minor, by and through his mother and next friend, Michelle Cook, et al v. the Honorable James P. Mazzone, Lead Presiding Judge, Zoloft Litigation, Mass Litigation Panel, And Pfizer, Inc., Roerig, A Division Of Pfizer, Inc., and Greenstone, LLC F/K/A Greenstone, Ltd., WVSCA Docket No. 14-0207.

Respectfully submitted this 16th day of April, 2014.

Mark S. Cheffo
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010-1601
Telephone: (212) 849-7000
Fax: (212) 849-7100

COUNTY OF New York,

STATE OF New York to wit:

Signed and sworn to before me, a Notary Public, this 16th day of April, 2014.

Notary Public

My Commission expires: 8/20/16

David S Reed
Notary Public, State of New York
No: 01RE6267697
Qualified in New York County
Commission Expires: August 20, 2016

CERIFICATE OF SERVICE

The undersigned hereby certifies that on **April 18, 2014**, he served a true and correct copy of the foregoing **PETITIONERS' SUPPLEMENTAL BRIEF IN SUPPORT OF EMERGENCY PETITION FOR PROHIBITION** by sending the same in the U.S. Mail, first class, postage prepaid, upon the following:

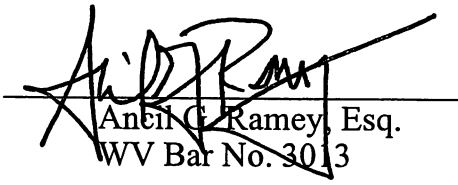
Michael J. Farrell, Esq.
Erik W. Legg, Esq.
Farrell, White & Legg PLLC
P.O. Box 6457
Huntington, West Virginia 25772-6457
Counsel for Respondents

Mark S. Cheffo, Esq.
Katherine Armstrong, Esq.
Mara C. Cusker Gonzalez, Esq.
Quinn, Emanual Urquhart & Sullivan, LLP
51 Madison Avenue
New York, NY 10010
Counsel for Respondents

Honorable James P. Mazzone
Chief Trial Judge, Zoloft Mass Litigation Panel
Ohio County Courthouse
1500 Chapline Street, Room 503
Wheeling, WV 26003

Honorable Judge Alan D. Moats
Chair, Mass Litigation Panel
214 West Main Street
Grafton, WV 26354

Kimberly R. Fields, Esq.
Mass Litigation Manager
Supreme Court of Appeals of West Virginia
1900 Kanawha Blvd., East
Building 1, Room E-100
Charleston, WV 25305



Antil C. Ramey, Esq.
WV Bar No. 3013